

AMENDED IN ASSEMBLY JUNE 24, 2004

AMENDED IN ASSEMBLY JUNE 9, 2004

AMENDED IN SENATE MAY 3, 2004

AMENDED IN SENATE APRIL 22, 2004

AMENDED IN SENATE APRIL 1, 2004

AMENDED IN SENATE MARCH 30, 2004

SENATE BILL

No. 1569

Introduced by Senator Dunn

February 19, 2004

An act to add Section 1393.3 to the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

SB 1569, as amended, Dunn. Provider remedies.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Department of Managed Health Care. The act requires that a contract between a plan and a provider contain provisions requiring a fast, fair, and cost-effective dispute resolution mechanism and that reimbursement of a complete claim, which is neither contested nor denied, be made within a designated time period.

This bill would authorize a provider, as defined, to bring an action, subject to specified conditions, against a health care service plan that violates a provision of the act or its implementing regulations relating to claims processing or payment, as defined. The bill would also authorize a provider to bring an action against a plan, subject to

specified conditions, that negligently delegates its payment responsibility to a contracting entity that becomes insolvent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds and declares the
2 following:

3 (1) Billing by providers and claims processing by health care
4 service plans are essential components of the health care delivery
5 process.

6 (2) While providers have traditionally utilized the courts as a
7 mechanism to seek payment relief, courts in *Ochs v. PacifiCare of*
8 *California* (2004) 115 Cal.App.4th 782; *In re Managed Care*
9 *Litigation* (2003) 298 F.Supp.2d 1259, and *Chase Dennis*
10 *Emergency Group, Inc. v. Aetna* (2003) Cal.App. Unpub. LEXIS
11 9235, which is not an officially published case, have concluded
12 that the payment provisions of the Knox-Keene Health Care
13 Service Plan Act of 1975 (Chapter 2.2 (commencing with Section
14 1340) of Division 2 of the Health and Safety Code (hereafter the
15 Knox-Keene Act)) are not directly enforceable by providers
16 because the payment of providers is a regulatory responsibility of
17 the Department of Managed Health Care.

18 (3) At the same time, the Department of Managed Health Care
19 has interpreted the Knox-Keene Act to authorize it to impose fines
20 on plans that on a systemic basis, fail to comply with the
21 Knox-Keene Act payment and claims processing provisions, but
22 that it is without authority to compel plans to pay an individual
23 provider.

24 (4) If providers are unable to obtain relief from either the
25 Department of Managed Health Care or the courts, they may be
26 without a remedy for nonpayment of their claims and other
27 violations of the Knox-Keene Act.

28 (b) It is, therefore, the intent of the Legislature to clarify that
29 providers may maintain suits, as set forth in this act, to redress
30 payment violations under the Knox-Keene Act. To avoid any
31 misinterpretation, this act applies only to the payment and claims
32 processing provisions it specifically identifies and to the instances



1 where a plan's contracting entity becomes insolvent as specifically
2 identified in this act.

3 SEC. 2. Section 1393.3 is added to the Health and Safety
4 Code, to read:

5 1393.3. (a) If a health care service plan violates a provision
6 of this chapter or its implementing regulations relating to claims
7 processing or payment, a provider that contracts directly with the
8 plan may bring an action against that plan to recover contract
9 damages plus penalties and interest in accordance with this chapter
10 and, if appropriate, to obtain injunctive relief.

11 (b) Notwithstanding any delegation of duties under this
12 chapter, if a health care service plan has been negligent in its
13 delegation of payment responsibilities to a contracting entity, a
14 provider that contracts directly with the contracting entity may
15 bring an action against the plan to recover quasi-contract damages,
16 plus penalties and interest in accordance with this chapter, and, if
17 appropriate, injunctive relief, if all of the following conditions
18 exist:

19 (1) The contracting entity has become insolvent.

20 (2) The provider has provided ~~services~~ *services* to the plan's
21 enrollees on or after January 1, 2005.

22 (3) The provider has not been paid by the plan's contracting
23 entity.

24 (c) If a health care service plan violates a provision of this
25 chapter or its implementing regulations relating to claims
26 processing or payment for a claim submitted directly to the plan,
27 a provider may bring an action against the plan to recover
28 quasi-contract damages, plus penalties and interest in accordance
29 with this chapter, and, if appropriate, injunctive relief, if both of
30 the following conditions exist:

31 (1) The provider has no written contract with the plan or its
32 contracting entity.

33 (2) The provider has provided to the enrollee emergency
34 medical services and care as set forth in Section 1371.4 that are
35 covered under the enrollee's plan contract.

36 (d) If a health care service plan has delegated payment
37 responsibilities to a contracting entity that becomes insolvent, a
38 provider who has no written contract with the plan or its
39 contracting entity and who has provided to the enrollee ~~emergency~~
40 ~~medical services and care or necessary medical care as set forth~~

1 *covered services as set forth* in Section 1371.4 on or after January
2 1, 2005, but has not been paid for those services by the contracting
3 entity, may bring an action against the plan to recover
4 quasi-contract damages plus interest and penalties, and if
5 appropriate, injunctive relief.

6 (e) If the provider is a shareholder, employee, partner, or
7 contractor of a lawfully organized group practice and does not
8 contract directly with the health care service plan or the entity that
9 directly contracts with the health care service plan, the action may
10 be filed only by the group practice and not by its shareholders,
11 employees, partners, or contractors.

12 (f) A provider may not maintain a cause of action pursuant to
13 this section if the claim in dispute concerns a service that is
14 excluded as a covered benefit from the terms and conditions of the
15 health care service plan contract or is a disputed health care service
16 for which independent medical review has been requested but not
17 yet completed pursuant to Article 5.55 (commencing with Section
18 1374.30).

19 (g) For purposes of this section, the following definitions
20 apply:

21 (1) “A provision of this chapter or its implementing
22 regulations relating to claims processing or payment” means
23 Section 1371, 1371.1, 1371.2, 1371.22, 1371.35, 1371.36,
24 1371.37, 1371.4, or 1371.8 of this code or Section 1300.71,
25 1300.71.38, or 1300.71.4 of Title 28 of the California Code of
26 Regulations.

27 (2) “Insolvent” means having stopped paying all claims in the
28 ordinary course of business.

29 (3) “Provider” means a physician and surgeon *or a doctor of*
30 *podiatric medicine* licensed pursuant to Chapter 5 (commencing
31 with Section 2000) of Division 2 of the Business and Professions
32 Code, an osteopathic physician and surgeon licensed pursuant to
33 the Osteopathic Act, or a lawfully organized group of those
34 physicians and surgeons, *podiatrists*, or osteopathic physicians
35 and surgeons.

36 (4) “Quasi-contract damages” means the reasonable value of
37 the services rendered by the provider.

38 (h) Nothing in this section shall be construed to negate a
39 contractual requirement between a plan and a provider relating to
40 the exhaustion of contractual or administrative remedies, where

1 applicable, or to revise or expand the scope of practice of a
2 provider or to revise or expand the types of providers who are
3 authorized to submit claims to, and contract with, a health care
4 service plan.

5 (i) A provider may maintain a cause of action pursuant to this
6 section only if the provider has exhausted remedies set forth in his
7 or her contract with the plan or contracting entity that are
8 administered and conducted by the plan or entity itself and that are
9 available, and the provider has pursued his or her rights pursuant
10 to Section 1367 and regulations implementing that section, where
11 applicable.

12 (j) *An action brought pursuant to subdivision (a) shall be*
13 *governed by Section 337 of the Code of Civil Procedure. An action*
14 *brought pursuant to subdivisions (b) to (d), inclusive, shall be*
15 *governed by Section 339 of the Code of Civil Procedure.*

16 (k) The remedies provided in this section shall be in addition to,
17 and not in derogation of, all other rights and remedies that a
18 provider may have under any other law.

